THE
Dan Smoot Report

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DAN SMOOT

WE NEED TO CURB THE COURT

DIRKSEN'S APPORTIONMENT AMENDMENT

In *Baker v. Carr* (1962), the Warren Court held, in effect, that federal courts have jurisdiction to supervise the actions of *state legislatures* in the apportionment and districting of *states* for purposes of *state and local* elections. This decision involved laws of the State of Tennessee.

Shortly after *Baker v. Carr*, the General Assembly of the States initiated a campaign for a constitutional convention to propose an amendment which would remove all federal court jurisdiction in state apportionment matters.

In *Reynolds v. Sims* (1964), the Warren Court applied its "one man, one vote" dictum to *all* states, holding that both houses of a state legislature must be apportioned on a basis of substantial equality of population. In December, 1964, the General Assembly of the States modified its recommended amendment. The modified amendment would require state legislatures to reapportion each year after a national census; and would require that one house of a bicameral state legislature be apportioned on a "one man, one vote" basis; but would permit the other house to be apportioned on the basis of "population, geography, and political subdivisions." The amendment would require each state reapportionment to be approved by state-wide referendum, and would require that the state legislature proposing the reapportionment already be apportioned in compliance with the Warren Court's "one man, one vote" dictum.

Senator Everett Dirksen introduced in the Senate a resolution proposing a constitutional amendment practically identical with the second version sponsored by the General Assembly of the States. Dirksen's resolution failed to pass in the Senate in 1965, and again in 1966. Since then, Dirksen has supported the campaign for state legislatures to petition Congress to call a constitutional convention to propose his apportionment amendment.

THE DAN SMOOT REPORT is published weekly by The Dan Smoot Report, Inc., Box 9538, Dallas, Texas 75214 (office at 6441 Gaston Ave.). Subscriptions: $18.00 for 2 years; $10.00, 1 year; $6.00, 6 months; first class, $12.50 a year; airmail, $14.50. Dan Smoot was born in Missouri, reared in Texas. With BA and MA degrees from SMU (1938 and 1940), he joined the Harvard faculty (1941) as a Teaching Fellow, doing graduate work in American civilization. From 1942 to 1951, he was an FBI agent; from 1951 to 1955, a commentator on national radio and television. In 1955, he started his present independent, free-enterprise business: publishing this REPORT and abbreviating it each week for radio and TV broadcasts available for commercial sponsorship by business firms.

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The Constitution authorizes two amendment methods: (1) Congress, by a vote of two-thirds of both houses, *may propose* a constitutional amendment; or (2) Congress *shall call a convention for proposing* amendments whenever two-thirds of all state legislatures petition Congress to do so. In either case, proposed amendments must be ratified by three-fourths of all states.

Though many efforts have been made to propose amendments by getting enough states to petition Congress for a constitutional convention, none has ever succeeded. The only amendments ever submitted to states for ratification were proposed by Congress.

By the end of March, 1967, 30 state legislatures had petitioned Congress for a constitutional convention to propose the Dirksen apportionment amendment. When 4 more states petition, Congress (if it obeys the Constitution) must call a constitutional convention[1] — the first since 1787.

I hope this does not happen.

The *threat* of a constitutional convention may be a desirable means of inducing Congress to propose constitutional amendments in the customary way, but no one knows what would happen if a convention were actually called. How would delegates be chosen? Could the convention be restricted to proposing one amendment whose text was fixed by the state legislatures' petitions that caused Congress to call the convention? Could it rewrite the amendment and propose others? The Constitution provides no answers to such questions, and there are no precedents to follow.

We elect pitifully few constitutionalist statesmen to represent us in Washington, in state capitals, in county and city governments. How could we get statesmen to represent us at a constitutional convention? A constitutional convention would doubtless be dominated by totalitarian liberals, as most elected bodies in the U. S. presently are. Such a convention could do great damage, even if all its proposals were not approved when submitted to the states.

Moreover, the Dirksen apportionment amendment — for which a constitutional convention may be called — is unnecessary and undesirable. The Supreme Court has no valid authority in matters involving state legislative apportionment. Its decisions in this field are *illegal*. Dirksen's amendment would give the Court *legal* grounds to meddle where it now has none.

DIRKSEN'S PRAYER AMENDMENT

Senator Dirksen has also proposed a "prayer amendment." This proposal grew out of the Warren Court's 1962 decision banning a prescribed prayer in New York public schools — and out of subsequent court and administrative decisions banishing Bible reading and prayers in tax-supported schools.

In 1951, the New York State Board of Regents composed a prayer which teachers and children *could* recite aloud in public school classrooms — *but were not required to recite*:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessing upon us, our parents, our teachers, and our country."

Children could leave the room or remain silent during the prayer, without prejudice.

Not many school systems in New York ever used the Regents' Prayer; but one in New Hyde Park, Long Island, adopted it in 1958. In 1959, 5 parents (two Jews, one Unitarian, one atheist, and one member of the Technical Culture Society) brought suit (*Engel v. Vitale*). On June 25, 1962, the Warren Court held that voluntary recitation of the Regents' Prayer violated the "establishment clause" of the First Amendment as "reinforced by provisions of the Fourteenth Amendment."

Within a week, more than 30 resolutions were introduced in Congress proposing constitutional amendments to "permit" prayer in public schools.

In 1963, the Warren Court handed down a decision in two cases handled as one: *Abington Township v. Schempp* and *Murray v. Curlett*. In

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Abington, the Court outlawed a Pennsylvania statute requiring the reading of 10 Bible verses in public school classrooms each day. In *Murray*, the Court outlawed a rule by the Baltimore Board of School Commissioners (based on a Maryland state law), providing for Bible reading or recitation of the Lord's Prayer in public school classrooms (with pupils not wishing to participate being excused).

More resolutions were introduced in Congress proposing constitutional amendments to "permit" prayer in public schools.

In 1965, the Warren Court refused to review *Stein v. Oshinsky*, thus reaffirming a lower court decision that a New York school administrator was correct in prohibiting prayer in public school classrooms.

Public and congressional indignation flared again. On March 22, 1966, Senator Dirksen introduced a resolution proposing a constitutional amendment to "permit" voluntary prayer in public schools, but specifying that school officials were not authorized to prescribe the form or content of prayers. Dirksen's resolution failed to get a two-thirds majority for passage.[2]

The Dirksen prayer amendment is still receiving some public support; but it — like all other suggested amendments to *permit* prayer in public schools — is unnecessary and undesirable, because nothing in the present Constitution *prohibits* prayer in public schools.

The First Amendment does not prohibit Americans from praying anywhere they please. It does not prohibit state governments or state institutions from doing anything with regard to religious exercises. It *prohibits the federal government* from interfering with the free exercise of religion. Nevertheless, the Warren Court *outlawed* the free exercise of religion in public schools, basing its authority on the false doctrine that the Fourteenth Amendment changed the First Amendment.[3]

In the first session of the First Congress (1789), James Madison (then a U. S. Representative, later President, historically known as Father of the Constitution) introduced resolutions proposing several constitutional amendments. Among them were 10 which Congress approved and the states ratified and which came to be called the American Bill of Rights — the first 10 Amendments to our Constitution. The religious-freedom provision of the First Amendment says:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

Before submitting this amendment to the states, the First Congress decided that the limitations applied only to the federal government, not to state governments.

Joseph Story (a contemporary of the Founding Fathers, Supreme Court Justice from 1811 to 1845) said the purpose of the religious-freedom provision of the First Amendment was *not* to discredit *state* establishments of religion, but merely "to exclude from the *National Government* all power to act on the subject."

Beginning with Chief Justice John Marshall's opinion in *Barron v. Baltimore* (1833), the Supreme Court frequently reaffirmed that the Bill-of-Rights' limitations applied only to the federal government.

The Fourteenth Amendment (though illegally submitted by Congress and never legally ratified) was proclaimed adopted on July 20, 1868. Almost immediately, contentions were made that the Fourteenth Amendment absorbed the Bill of Rights and extended its limitations to include state governments. In 1873, the Supreme Court rejected these contentions, castigating those who made them as wanting to centralize "in the hands of the Federal Government powers hitherto exercised by the States."

Between 1873 and 1907, Supreme Court decisions in more than 20 cases reaffirmed that the Fourteenth Amendment did not extend Bill-of-Rights limitations on government power to *state* governments. In 1925, the Court reversed itself — deciding (*Gitlow v. New York*) that the Fourteenth Amendment did extend prohibitions of the First Amendment to state governments, thus giving the Court supervisory powers over state legislation.[3]

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This is the false doctrine the Warren Court used in its New York prayer case decision in 1962. But that decision and all others deriving from it are illegal, because they are federal actions which the Bill of Rights specifically forbids.

Under pretext of protecting freedom of religion, the Court has illegally assumed authority to banish from public schools all established faiths and forms of worship, and has, in effect, decreed agnosticism the officially-approved religion of the United States. Children in school may discuss the doctrines of atheism, proclaim themselves agnostics, show irreverence toward God, or even blaspheme His name; but the preponderant majority of children who want spiritual nourishment may not speak a word to God.

The Dirksen prayer amendment would make matters worse. It would give the federal government authority to supervise religious practices in public schools whereas no legitimate authority now exists; it would empower the federal government to make some restrictions on the free exercise of religion in state institutions, whereas the government now has no legitimate power in that field; it would indicate that the Warren Court was constitutionally correct in handing down its previous decisions banishing God and the Bible from public schools, whereas the Court had no authority to make those decisions.

SOMETHING MUST BE DONE

The Supreme Court under Earl Warren has almost destroyed our Constitution, and has been a foremost promoter of communism and anarchy in the United States.[4] With Johnson's most recent appointment of Thurgood Marshall to replace Tom Clark, the Court will become even worse. Although Tom Clark participated in many of the Court's damaging decisions, he did dissent in several of the most blatant pro-communist decisions and in some which handicap legitimate law enforcement. Thurgood Marshall, a former NAACP lawyer with a long career as a biased leftwing agitator, was a member of the National Committee of the International Juridical Association, along with 8 notorious communists and Johnson's other Supreme Court appointee, Abe Fortas.[6]

U. S. Representative Ray Roberts, rejoicing that a constitutional convention may soon be called to propose court-curbing amendments, says "Congress has little power to regulate the high court."[5] The Congressman is wrong about the desirability of a constitutional convention, about the need for amendments to curb the Court, and about the power of Congress. Congress has full constitutional power to control the Supreme Court. We need a Congress that will exercise that power.

NEXT WEEK: More on the Warren Court and how to curb it.

FOOTNOTES

(1) Thirty-two state legislatures have petitioned Congress for an apportionment amendment: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming. The Washington and Wyoming petitions, however, call for the first proposal supported by the General Assembly of States. Only 30 have specifically petitioned for the proposal now called the Dirksen amendment.

For background, see *Congressional Quarterly 1965 Weekly Report*, p. 339; *Congressional Quarterly 1965 Almanac*, p. 520; *Congressional Quarterly 1966 Weekly Report*, p. 827; *Congressional Quarterly 1967 Weekly Report*, p. 439.

(2) For background on the Dirksen prayer amendment, and on pertinent Court decisions, see *Congressional Quarterly 1966 Almanac*, pp. 512 ff. Also see "Supreme Court's Prayer Decision," Parts I-IV, *The Dan Smoot Report*, July 16, July 23, July 30, August 13, 1962; and "Outlawing God," *The Dan Smoot Report*, March 2, 1964.

(3) For a history of the First Amendment, see "Outlawing God," *The Dan Smoot Report*, March 2, 1964; and *The Constitution of the United States of America: Analysis and Interpretation; Annotations of Cases Decided by the Supreme Court of the United States to June 30, 1952*, prepared by the Legislative Reference Service, Library of Congress, published by the Government Printing Office as Senate Document No. 170.

(4) See "Earl Warren Court" Parts I-IV, *The Dan Smoot Report*, March 22,, March 29, April 5, April 12, 1965.

(5) "Roberts Sees Chance to Alter Court Rulings," *The Dallas Morning News*, June 15, 1967, A4

(6) *Wilbur J. Cohen: Pursuit of Power*, by Marjorie Shearon, $3.50, Shearon Legislative Service, 8801 Jones Mill Road, Chevy Chase, Md. 20015, pp. 115, 121-22

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